IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3197 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SAMSHERSING BINDRASING RAJPUT & 3 - Applicant(s)
Versus
KIRITBHAI CHHAGANBHAI PATEL & 1 - Respondent(s)

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Appearance :
MR RR MARSHALL for Petitioners.
MR JB PARDIWALA for Respondent No.1.
MR HL JANI, APP for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/09/2005

ORAL JUDGMENT

1.Rule. Mr. J.B. Pardiwala, the learned advocate appearing for the respondent No. 1 and Mr. H.L. Jani, learned Assistant Public Prosecutor appearing for the respondent No. 2 – State, waives service of rule. At the joint request of the parties, the matter is taken up for final hearing.

2.The petitioners – original accused Nos. 2 to 5 have filed this petition under Section 482 of the Criminal Procedure Code for quashing and setting aside the complaint being Inquiry Case No. 41 of 2004 registered with Athwa Lines Police Station, Surat as M. Case No. 4 of 2005, qua the petitioners.

3.It is the case of the petitioners that the respondent No. 1 – original complainant lodged private complaint in the Court of Learned J.M.F.C., 3rd Court, Surat for offence punishable under Sections 420, 467, 468, 471, 120-B, 114 read with Section 34 of IPC against the petitioners and 2

other accused. The case of the complainant in brief is that the complainant and few others are joint owners of the land situated at village Althan bearing Revenue Survey No. 99/1-A bearing Block No. 128. It is the case of the complainant that the original accused No. 1 as shown in the cause title of the complaint, Jagdishbhai Maganbhai Patel in collusion with other persons forged a bogus and concocted Power of Attorney dated 16.10.2000. It is alleged that the original accused No. 1 Jagdishbhai on the strength of the bogus, forged and concocted power of attorney transferred the lands in favour of the present petitioners by executing 4 independent Sale Deeds in four cases. It is also the case of the complainant that by forging a bogus power of attorney, the original accused No. 1 in collusion with the present petitioners have usurped the property. The learned JMFC recorded the verification of the complainant on 31.07.2004 and vide order dated 16.09.2004, directed the Police to investigate into the allegations as per provisions of Section 156 (3) of

Cr.P.C. On passing of the order, the complaint is now numbered as Inquiry Case No. 41 of 2004 and the same is being investigated by Athwa Lines Police Station, Surat as M. Case No. 4 of 2004.

4. Being aggrieved by the said action of the complainant and the order of inquiry passed by the learned Magistrate, the petitioners have filed the present petition before this Court on 21.03.2005.

5. This Court has issued notice on 22.03.2005 and granted interim relief to petitioner No. 1. On 11.05.2005, further order was passed by this Court wherein it is observed that in view of the documents produced by the petitioners and the submissions made before the Court on earlier occasion, it would be appropriate to grant some protection to the petitioner. The Investigating Agency was allowed to continue with the investigation. However, they were directed not to take any coercive steps against the present petitioners till the complainant was served and

filed his appearance before the Court.

6.After service of the notice to the complainant, affidavit-in-reply was filed on behalf of the complainant.

7.After having heard learned advocate Mr. R.R. Marshall for the petitioners, Mr. J.B. Pardiwala, learned advocate appearing for the original complainant and Mr. H.L. Jani, learned Assistant Public Prosecutor, the Court was requested by the learned advocates that since the compromise was arrived at between the parties and the petitioner No. 1 and the original complainant are present before the Court and they have submitted that the disputes have been settled between them and necessary documents are produced on record, complaint may be quashed and set aside so far as the present petitioners are concerned.

8.Mr. Pardiwala has specifically drawn attention of the Court that before the complaint was filed, the

complainant has also instituted one Special Civil Suit No. 09 of 2004 in the Court of Civil Judge (S.D.), Surat praying for declaration and injunction. After the institution of the suit and the prosecution, many elderly persons from the families of both the sides intervened with the avowed object and intention of putting an end to the dispute amicably and bonafidely. There were many misunderstandings between the parties with regard to the properties in question and the same were ultimately resolved. The settlement which was arrived at was reduced in writing on 20.04.2005, was signed by both the parties. Before the learned 2nd Joint Civil Judge (S.D.), Surat a pursis at Exh. 121 was passed stating that without entering into the merits of the suit, the complainant as one of the co-owners and as a Power of Attorney Holder of the other co-owners declared that the disputed sale deeds executed in favour of the petitioners are accepted by all the co-owners and the complainant has also undertaken by way of said pursis to see that the properties in question are legally

registered in the names of the petitioners. The learned 2nd Joint Civil Judge (S.D.), Surat accepted the pursis and passed the decree as prayed for in terms of settlement. The certified copy of the pursis, decree and the copy of the settlement are produced on record of this Court. As on today, the entire controversy between the parties has been resolved and in view of the amicable settlement of the dispute between the complainant as well as the petitioners, the prosecution which is pending against the petitioners are required to be quashed and set aside.

9. In view of the aforesaid settlement arrived at between the parties, both the learned advocates appearing for the respective parties have requested this Court to quash the complaint filed by the complainant while exercising the inherent powers of this Court under Section 482 of Cr.P.C.

10. At this stage, Mr. H.L. Jani, learned Assistant Public Prosecutor appearing for the respondent No.

1 – State, on the other hand, has submitted that though the settlement was arrived at between the petitioners and the respondent No. 2, the complaint cannot be quashed as there are other serious allegations in the complaint as false document was created and on the basis of the false document, properties were got transferred. So far as these allegations are concerned, the settlement arrived at between the parties would not have any bearing and since these are the non-compoundable offences, the complaint cannot be quashed even after the parties have settled their disputes. He has, therefore, submitted that the present petition is required to be dismissed. In support of his submission, he has relied on the decision of the Hon'ble Supreme Court in the case of **Inspector of Police, CBI V/s. B. Raja Gopal & Others, JT 2002 (2) SCC 331** wherein the Hon'ble Supreme Court has observed that the premature quashment made by the High Court is not in accordance with law. The Court, therefore, allowed the appeal and set aside the impugned judgment. The Hon'ble Court has

further observed that whether there was any intention on the part of the accused to cheat or whether there was any act of forgery, these are the matters for the Trial Court to reach when the final conclusion is made. Even assuming that the said stand of the accused is correct, that was not enough for quashing the criminal proceedings. Perhaps that would have been a ground for pleading mitigation at the final stage. In that case, the case involved offences under Section 420, 468 & 471 of Indian Penal Code on the allegation that the Bank was defrauded. One of the premise adopted by the High Court was that there was a compromise between the Bank Officials and the accused and the disputed amount found due from the accused has been paid later.

11.After having heard the learned advocates appearing for the petitioner and the respondent No. 1 and the learned Assistant Public Prosecutor appearing for the respondent No. 2 – State and after having gone through the affidavit filed by respondent No. 1

before this Court along with the petition to which learned advocate appearing for the respondent No. 1 has confirmed, the Court is of the view that the complaint is required to be quashed and set aside by exercising the powers vested in this Court under Section 482 of Cr.P.C., in view of the settlement arrived at between the parties.

12.The law is well settled by now. In the case of **B.S. Joshi V/s. State of Haryana & Another, [2003] 4 S.C.C. 675**, the Hon'ble Supreme Court has observed that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such power. Thus, the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Cr.P.C. The Court has further observed that it is

well settled that the powers under Section 482 have no limits. Of Course, whether there is more power, it becomes necessary to exercise with utmost care and caution while invoking such powers. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In that case before the Hon'ble Supreme Court, the wife filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So it would not be proper to declare the exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides.

13.Based on the aforesaid judgment of the Hon'ble Supreme Court, this Court has taken the view in the case of **Nitinbhai Mathurdas Thakkar V/s. State of Gujarat, 2005 (2) G.L.H. 639** that it is experienced that dragging of a criminal complaint even after settlement between the parties in certain class and category of offences results against the object and intention of penology and also the faith in criminal justice delivery system. So when the High Court is requested to exercise inherent powers vested with it under Section 482 of the Code of Criminal Procedure r/w. Arts. 226/227 of the Constitution of India, the High Court can categorize cases in which such powers can be exercised. It would be improper to decline to exercise powers of quashing on the ground that it would be permitting the parties to compound non-compoundable offence. Non-exercise of inherent powers to quash the proceedings to meet with the ends of justice would prevent women from settling earlier.

14.In some of the decisions of this Court the complaints were quashed on the ground that settlement was arrived at between the parties despite the fact that the offences punishable under Section 366 or offences punishable under Section 376, 385, 507 & 114 as well as non-compoundable offences were involved. Despite these facts, the complaints were quashed by the Court while exercising the powers under Section 482 of the Code of Criminal Procedure.

15.In view of several decisions referred to hereinabove, it would not be just or proper nor it would be in the interest of justice to compel the parties to face trial despite there being settlement. In the several decisions cited at the bar, such course was adopted by the High Court and the Hon'ble Supreme Court and the complaints / FIRs were quashed even though the alleged offences were not compoundable. Following these decisions and looking to the facts of the present case, the objection raised by learned Assistant Public

Prosecutor, Mr. H.L. Jani is not found to be sustainable and accordingly, the proceedings initiated by the complainant by filing criminal Complaint being Inquiry Case No. 41 of 2004 registered with Athwa Lines Police Station, Surat as M. Case No. 4 of 2005 is hereby quashed and set aside. The petition is accordingly allowed. Rule is made absolute without any order as to costs.

16.It is made clear that this order is applicable only qua the present petitioners and as far as other accused in the criminal case are concerned, the same will not apply and criminal proceedings will go on. This order would not come in the way of other authorities, if any other civil consequences may arise as a result of the above transactions entered into between the parties.

[K.A. PUJ, J.]

Savariya